IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1155 of 2002

In

SPECIAL CIVIL APPLICATION No. 6857 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

HANIFBHAI BAPUBHAI DASADIA – Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner No(s).: 1.

MR TR MISHRA for Respondent No(s).: 1.

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CORAM :HONOURABLE MR.JUSTICE R.S.GARG

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 06/07/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE R.S.GARG)

1.Present is an appeal against the judgement of the learned Single Judge dated 19.03.2002 delivered in Special Civil Application No.6857 of 2001. Short facts necessary for disposal of the present appeal are that during pedency of a dispute before the Labour Court the matter was referred to Lok Adalat and the parties entered into a compromise. The terms of the compromise are annexed at Annexure 'B' to the records of the Special Civil Application. Undisputedly, on the terms incorporated in the settlement final award was made. According to the terms of the award the employee was to be reinstated with the benefit of continuity in service, but he was not entitled to any salary for the interregnum period nor was entitled to any other benefits for the period of suspension. It was also agreed between the parties that if in future any settlement is arrived at then the benefits relating to pay fixation, etc. in accordance with pay fixation would be given to the employee. It was also agreed between the parties that the continuity of service would be in favour of the workman, but he would be reinstated on his basic salary and he would not be entitled to any other benefits. After his reinstatement when he was paid basic salary the workman raised an objection that he had given up his right of salary for the interregnum period, but for the purpose of his salary from the date of his reinstatement he was entitled to notional increments and the establishment could not deny him the pay fixation nor could deny notional increments. As the establishment was not agreeable to the proposal made by the workman, the workman instead of going to the Labour Court seeking clarification of the said terms came to this Court in the Special Civil Application.

1.It was contended in the Special Civil application that number of settlements were arrived at and benefit of refixation of the salary after taking into consideration the increments for the interregnum period were given to other workers, but the present respondent was singled out. It was also submitted that the workman could only be

denied back wages and not the increments for the period in which he was not on duty, and continuity of service would mean that he was entitled to count increments for the purpose of pay fixation.

2. The present appellant-corporaiton filed their counter and submitted before the learned Single Judge that it was incorrect to say that similarly situated employees in whose case the corporation entered into similar type of compromise before the Labour Court were granted benefit and the pay was fixed on reinstatement counting the interregnum period notionally for the purposes of incremental benefits. They also submitted that the case of one, Lakha B. Boricha was different and the petitioner-employee could not be compared with him. They also submitted that whenever any settlement regarding pay fixation was arrived at the benefit of the same even for the interregnum were granted in favour of the original petitioner.

1. After hearing the learned counsel for the parties the learned Single Judge allowed the writ application, being aggrieved of the same, the establishment is before this Court under clause 15 of the Letters Patent.

2. Learned Counsel for the appellant after taking us through the terms of settlement submitted that a fair understanding of the terms of settlement would make it very clear that the workman was to be reinstated, no salary was to be paid to him from the date of his removal to the date of reinstatement, no benefits were to be given to him for the said period, except pay fixation, if during that period any settlement was arrived at between the workman/ Union and the establishment. His submission is that if with open eyes the parties have entered into an agreement before Lok Adalat, then the said settlement cannot be challenged before any Court except on the ground of fraud or inherent lack of jurisdiction.

3. Mr.T.R. Mishra, learned counsel for the respondent workman vehemently contended that the establishment has given benefit of increment and pay fixation in case of others and as such the respondent was discriminated. He submitted that understanding of the parties was that the workman would not be entitled to the cash benefits, but there was no intention of the parties that the benefits of the increment also would not be given to him. His submission is that if continuity of services has been given, then the benefits flowing from the continuity of service should have been given to him.

4. He also submitted that if the understanding of the parties was different than what is being interpreted today, the matter be referred to the Labour Court. To this, when we asked Mr.Mishra that if on the ground of fraud we quash the settlement, then the workman will have to

leave the job as there would be no order in his favour, Mr.Mishra did not press this point.

5. So far as the argument relating to discrimination is concerned we must immediately say that the original respondent/ present appellant in their counter affidavit have clearly stated that no similarly situated person has been given the said benefits. They have clearly stated that the case of one, Lakha B. Boricha, Conductor was altogether different. In response/ reply to the pleadings raised by the establishment the petitioner/ workman did not file any further affidavit to give details of names of such persons who were given such benefits. We are unable to concede to this argument of Mr.Mishra.

6. The learned Single Judge appears to have allowed the Special Civil Application mainly on the ground that if continuity of services has been ordered in favour of the workman, then the benefit of annual increments, etc. would flow in favour of the workman. In our considered opinion when the terms of settlement clearly stated that no benefits would be counted in favour of the workman nor would be paid to him for a particular period and the workman would be reinstated on his basic pay, then there is no scope to hold or interpret that the parties did agree that the benefits of the increment would be given to the incumbent/ workman. A fair reading and understanding of the consent terms/ compromise would make it clear that the workman was to be reinstated with the benefit of continuity of services, he was not to be paid any amount for the interregnum, he was not to be paid any salary for the period he was under suspension, he was not to be given any other benefits for the whole period. If that be so, then the only legal conclusion to which we would arrive would be that the workman was to be employed on a particular date on his basic salary and nothing further was to he given to him. We must make it clear that if the job is pensionable then for the purposes of pension that period would be counted and if the workman would be entitled to gratuity, then for the purposes of payment of gratuity, etc. this period would be counted in service. What we say is also the understanding of the establishment when they say that the benefit of continuity of service would be given when the petitioner retires from the service and has to be paid Provident Fund, gratuity and other retiral benefits.

7. In our considered opinion the learned Single Judge was not justified in giving benefits in favour of the respondent workman. The judgment of the learned Single Judge is set aside. The appeal is allowed with the clarifications aforesaid. No order as to cost.

(R.S. Garg, J.)

(Ravi R. Tripathi, J.)

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